GOH SAY JOO & ORS

v.

DATO' LIM AH CHAP

HIGH COURT MALAYA, KUANTAN
HELILIAH MOHD YUSOF J
[ORIGINATING SUMMONS NO: 24-50-2003]
1 JULY 2004

UNINCORPORATED ASSOCIATIONS: *Societies - Interpretation of rules of association - Dispute among members - Proper forum - Whether issue rendered academic – Whether defendant/President of association failed to act in accordance with said rules - Societies Act 1966, s. 16*

The plaintiffs in this action sought *inter alia*, the following: (i) a declaration that an Extraordinary General Meeting held on 18 February 2003 ('EGM') was unlawfully convened, and all resolutions passed in the EGM were null and void; (ii) a declaration that the first plaintiff (as Assistant Secretary) was unlawfully removed at the EGM; (iii) a declaration that the defendant had been unlawfully conferred at the EGM with powers to act as the Secretary and Assistant Secretary of the Jerantut Chinese Chamber of Commerce Pahang ('JCCCP'); and (iv) a declaration that the resolution *inter alia* passed at the EGM to convene the Annual General Meeting held on 23 March 2003 ('AGM') was null and void. The plaintiffs, who were members of the JCCCP, were also members of the Executive Committee of the JCCCP ('EXCO') whereas the defendant was the President of the JCCCP, and both parties were governed by the Rules of the Jerantut Chinese Chamber of Commerce Pahang ('JCCCP Rules'). The plaintiffs' complaint focused primarily on the issue of the President exercising powers where it would appear he had derogated to himself certain powers in a manner which was not found in the JCCCP Rules. The plaintiffs' action was opposed on several grounds, the principal ones being: (a) that the subject matter of the action was more of a dispute among members or office bearers of a society and as such the proper forum was the Registrar of Societies and not the High Court, based on s. 16 of the Societies Act 1966 ('the Act'); and (b) that the plaintiffs' application was without merits and had been rendered academic.

A **Held:**

(1) The JCCCP Rules themselves were lacking in providing a proper link between s. 16 of the Act and the JCCCP. In effect, the JCCCP Rules did not really provide that members
B were only to resort to arbitration for if any one party refused consent, other members would then be left without a remedy. In the present situation, it would be doubtful that a dispute could be referred to the Registrar. Section 16 of the Act did not constitute an exclusive remedy in the circumstances of the
C present proceedings. (para 18)

(2) Although it had been urged by the defendant that since an Annual General Meeting had been convened rendering the issue academic, it could not be alleged that the court was being asked to pronounce on an abstract question or that
D there was no dispute to be resolved. The AGM had passed certain resolutions affecting members and the AGM had been convened pursuant to the EGM. (para 21)

(3) The validity of the EGM hinged on there being non-
E compliance with r. 10(a)(i) and (ii) of the JCCCP Rules and the functions of the EXCO; yet, the President had wrested away the powers. His actions also brought into question instances of non-compliance with the provisions of r. 7(b) of the JCCCP Rules where the participation of certain members
F were questionable on the ground of irregularities in respect of their membership in the JCCCP. The President had displayed a unilateral exercise of power in the infringement of r. 7(b) of the JCCCP Rules and that resulted in unauthorized members casting votes. The infringement of the JCCCP Rules verged on
G the EGM being wrongfully convened independently of the EXCO, which was vested with the power of running the activities of the JCCCP. (paras 24 & 25)

(4) Since the EGM was convened on the basis of non-compliance
H with the JCCCP Rules, the resolutions undertaken during the EGM were therefore null and void and of no effect. The purported removal of the first plaintiff was also rendered to be of no effect since the EGM should not have been convened in the first place. The justice of the case also indicated that
I certain members were not given the opportunity to be heard. (para 26)

(5) The defendant had failed to rebut the allegations, particularly any rationalized explanation for the application of the JCCCP Rules in the manner that the President had manipulated it. It was evidence of an authoritarian approach and sheer disregard for the JCCCP Rules. The efficacy of the JCCCP Rules was to be applied and enforced by all members alike in a fair and reasonable manner. It is axiomatic that all members of a society, irrespective of their positions, are required to adhere to the rules unless express powers are conferred. In this instance, however, r. 11(7) of the JCCCP Rules indicated that it was also not the President who held the ultimate authority in the interpretation of the JCCCP Rules. (paras 27 & 28)

(6) On a balance of probabilities, the plaintiffs had established a case of a President who had purported to act not in accordance with the JCCCP Rules which were equally binding on him, but in excess thereof. The EGM, on the basis that it contravened the Rules, was illegal and therefore null and void. Consequently, the AGM with all the resolutions that were carried out at that time was also null and void. Order in terms were, thus, granted in respect of the plaintiffs' prayers. However, a further declaratory order was made that the JCCCP convene a fresh Annual General Meeting within a reasonable time in a manner consistent with the terms and provisions of the JCCCP Rules. Costs were to be taxed and to be paid from the funds of the JCCCP. (paras 29 & 30)

[Order accordingly.]

Case(s) referred to:

Hilborne v. Singapore Island Country Club [1996] 2 SLR 468 ***(refd)***

Pengarah Tanah & Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 148 ***(refd)***

Pyx Granite Estates Ltd v. Ministry of Housing and Local Government [1960] AC 260 ***(refd)***

Tan Kah Wich & Ors v. Datuk Phua Cheng Leong & Ors [1979] 2 MLJ 259 ***(refd)***

Legislation referred to:

Societies Act 1966, s. 16

For the plaintiffs - Andrew Chiew Ean Vooi; M/s Lee Hishamuddin
For the defendant - J Goldie; M/s Jacob Goldie & Toh

Reported by Suresh Nathan

A

JUDGMENT

Heliliah Mohd Yusof J:

[1] In this action (encl 3) the plaintiffs sought *inter alia*, the following:

B

1) a declaration that an Extraordinary General Meeting (EGM) held on 18 February 2003 was unlawfully convened, and all resolutions passed in the EGM are null and void;

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2) a declaration that the first plaintiff (as Assistant Secretary) was unlawfully removed at the EGM;

3) a declaration that the defendant had been unlawfully conferred at the EGM with powers to act as the Secretary and Assistant Secretary of the Jerantut Chinese Chamber of Commerce Pahang; and

D

4) a declaration that the resolution *inter alia* passed at the aforementioned EGM to convene the Annual General Meeting (AGM) held on 23 March 2003 is null and void.

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The other prayers were not dealt with as certain events had overtaken the relief sought.

[2] The court has jurisdiction and power to make declaratory judgments but it is a discretionary remedy. That power is also confined to matters which are justiciable and it must be justified by the circumstances of the case.

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[3] The court was asked to decide on an issue which concerned membership rights in a society. The plaintiffs and the defendant being members of the Jerantut Chinese Chamber of Commerce Pahang (JCCCP) were governed by the Rules of the Jerantut Chinese Chamber of Commerce Pahang (JCCCP Rules).

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[4] Both the plaintiffs and defendant had set out certain events which had taken place and which had culminated in the filing of encl. 3. The following constituted the matrix of relevant events:

H

1. The Plaintiffs were members of the JCCCP. The Plaintiffs were also members of the Executive Committee of the JCCCP or the EXCO.

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2. The Defendant is the President of the JCCCP. The President has been sued and named as a party to the proceedings by virtue of s. 9(c) of the Societies Act 1966. Section 9(c) of the Societies Act 1966 states that:

   (c) a society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose, and, if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any office-bearer of the society;

3. On 2.1.2003, the Secretary of the JCCCP had issued a notice to convene the 12th EXCO Meeting to be held on 10.1.2003. [Exhibit G-2 of Goh Say Joo's affidavit dated 7.5.2003 at pages 18-19].

4. On 8.1.2003, the President had on his own accord issued a notice to adjourn the 12th EXCO Meeting. Consent of the EXCO members was not sought before issuing the Notice to Adjourn. [Exhibit G-3 of Goh Say Joo's affidavit dated 7.5.2003 at pages 20-21].

5. The Plaintiffs had objected to the adjournment of the 12th EXCO Meeting. [Exhibit G-4 of Goh Say Joo's affidavit dated 7.5.2003 at pages 22-23].

6. On 10.1.2003, the Plaintiffs convened the 12th EXCO Meeting. During the 12th EXCO Meeting, the following resolutions were passed:

   (a) that 172 new members were be admitted as members of the Chamber. This resolution by the EXCO was contained in item 8 of the minutes of meeting found in Exhibit G-8 of Goh Say Joo's affidavit dated 7.5.2003 at pages 30 and 31; and

   (b) that the Annual General Meeting (AGM) of the Chamber was to be held on 13.4.2003. This resolution by the EXCO is contained in item 9.3 of the minutes of meeting found in Exhibit G-8 of Goh Say Joo's affidavit dated 7.5.2003 at pages 30 and 31.

7. On 5.2.2003, it was alleged the JCCCM purportedly received a members' requisition to convene an Extraordinary General Meeting (EGM). The EGM requisition was signed by 38 persons. [Exhibit G-9 of the affidavit affirmed by Goh Say Joo on 7.5.2003 at pages 36 to 43].

8. On 11.2.2003, some of the Plaintiffs received an undated notice to attend the EGM on 18.2.2003. The EGM notice had set out the following agenda:

   (a) a motion to remove the Secretary and Assistant Secretary of the Chamber;

   (b) a motion to "reject" the 12th EXCO Meeting and all resolutions passed in the 12th EXCO Meeting;

   (c) to authorize the President of the Chamber to be secretary and assistant secretary of the Chamber until the AGM; and

   (d) to convene the next AGM on 23.3.2003.

   The EGM notice was in Exhibit G-10 of the Affidavit affirmed by Goh Say Joo on 7.5.2003 at pages 44-45.

9. On that same day, 18 of the 38 members withdrew their respective requisitions to convene the EGM after the EGM notice was issued. The withdrawals were found in Exhibit G-11 of Goh Say Joo's affidavit dated 7.5.2003 at pages 48 to 83.

11. Subsequent to the said withdrawals, the JCCCM purportedly received fresh "re-applications" for the EGM from 30 persons on 14.2.2003. [Exhibit PDPCJ-6 of the affidavit affirmed by Dato' Lim Ah Chap on 20.3.2003 (Encl. No: 10a) at pages 114 to 173].

12. On 18.2.2003, the EGM was convened. Before the commencement of the EGM, the first Plaintiff objected to the convening of the EGM. However the first Plaintiff's objection was of no avail. The first Plaintiff thereafter left the EGM before its commencement.

13. In the EGM, the following resolutions were passed:

   (a) the Secretary and Assistant Secretary be removed;

   (b) the resolutions passed during the 12th EXCO Meeting were invalid;

   (c) the President of the Chamber was authorized to be the Secretary and Assistant Secretary of the Chamber until the AGM; and

   (d) the AGM shall be convened on 23.3.2003.

The passing of the above resolutions was set out in the minutes of the EGM found in Exhibit PDPCJ-2 of Encl. No: 10a at pages 26 to 33.

14. On 14.3.2003, the Plaintiffs filed this action into Court.

15. On 23.3.2003, the AGM was convened.

The plaintiffs alleged that the resolutions in the EGM brought about two adverse consequences, namely:

(a) as a result of the resolution to nullify the resolutions passed during the 12th EXCO Meeting, 172 new members lost their rights of membership; and

(b) the Secretary and the Assistant Secretary, that is the first plaintiff, had been wrongfully removed.

[5] The plaintiffs further alleged that the EGM had been unlawfully convened based on the following four grounds:

(a) the EGM requisition was invalid;

(b) the President had wrongfully convened the EGM without the agreement of the EXCO;

(c) the President had no power to issue the EGM notice; and

(d) the EGM was carried out in derogation of membership rights.

[6] It was found that the catalyst for the various relief being sought was to be traced to the EGM held on 18 February 2003 and following which an AGM on 23 March 2003 was convened.

[7] The evidence disclosed that an EXCO meeting held on 10 January 2003 was chaired by the Deputy President of the JCCCP. Although that meeting appeared to have been convened at the instance of the defendant, the defendant himself was absent but the EXCO continued to be convened (with the Deputy President present) and had also fixed an Annual General Meeting to be convened on 13 April 2003. Thereafter several events occurred which showed that certain members had initiated certain resolution seeking rejection of the EXCO meeting of 10 January 2003. Questions were also raised whether an EGM that was requested to have been held on 18 February 2003 were properly moved. It would then appear that there were certain factions in the JCCCP that were brewing resistance against the decision of the EXCO of 10 January 2003. The defendant however had moved for an EGM

to be convened on 18 February 2003 (EGM 18 February 2003). It was deposed that several members had been precluded from participating in this EGM. The first plaintiff attended the (EGM 18 February 2003) and attempted to furnish certain explain regarding the regularity or otherwise of EGM. Apparently he failed and the EGM continued to be convened. This EGM formed the basis of the following that is:

(a) the removal from office of the Secretary and the first plaintiff (as Assistant Secretary);

(b) that resolutions passed during the 12th EXCO Meeting were invalid;

(c) that the President be authorized to be the Secretary and Assistant Secretary of the Chambers until an AGM was held;

(d) that an AGM was to be convened on 23 March 2003.

[8] Declaratory orders have been applied in numerous and varied situations. Nevertheless there are certain guidelines which the court had to take into account. In so far as association and club, or even professional societies, plaintiffs' counsel have referred the decision in *Tan Kah Wich & Ors v. Datuk Phua Cheng Leong & Ors* [1979] 2 MLJ 259, 260 per Wan Suleiman FJ (as he then was):

> With the learned trial judge's finding of law as regards the effect of the constitution or rules of the Association on members, we would with respect agree. On pages 5 and 6 of the Sixth Edition of Shackelton on The Law and Practice of Meetings appears the following passage. "In the case of unincorporated associations such as clubs, trade unions, professional societies and the like, the rules as adopted between the members *inter se* are the source of the regulations to be applied in their members' meetings, and though such rules do not possess the force of law given to the rules of incorporated bodies by virtue of the incorporating statute, they are enforceable as terms of the implied contract involved in the fact of membership.
>
> Sometimes, not only when rules are silent on some point, but where they appear to operate unfairly, it is possible for the courts to have regard to the principles of natural justice in order to reach a decision in a disputed situation.

A decision in this matter would depend solely on interpretation of the rules of the Association. It is well to remember as was held in *Lee v. Showmen's Guild of Great Britain*(l) that construction of the rule is always a question of law. See also *Baker v. Jones & Ors.* (2).

[9] What was being sought from the court was not only a question of how the Rules governed the relationship of the plaintiffs and the defendant as members of the JCCCP but also an issue pertaining to the interpretation of the rules of the JCCCP and how the rules had been allocated. The said Rules also provided the distribution of certain responsibilities amongst the members.

[10] The issue therefore was related to the application of certain rules to the members. The court had taken note of several rules referred to by both counsels that is rr. 9, 10, 11, 12. The provisions of r. 10(a)(i) and (ii) are first reproduced as follows:

10. Extraordinary General Meetings

(a) An Extraordinary Meeting of the Chamber shall be convened:

(i) Whenever the Executive Committee deems it desirable; or

(ii) At the joint request in writing of not less than 20 members stating the objects and reasons for such meeting.

(b) An Extraordinary General Meeting requested by members shall be convened for a date within 14 days of the receipt of such requisition.

(c) Notice and Agenda for an Extraordinary General Meeting shall be forwarded by the Secretary to all members, at least 7 days before the date fixed for the meeting.

(d) No business shall be transacted at such meeting other than those specified in the Agenda and no amendment to any item for discussion proposed for the meeting shall be allowed.

(e) The quorum and postponement of the Annual General Meeting shall apply also to an Extraordinary General Meeting but with the proviso that if no quorum is present half an hour after the time appointed for the Extraordinary General Meeting requisitioned by members, the meeting shall be cancelled and no Extraordinary General Meeting shall be requisitioned for the same purpose until after the lapse of at

A least six (6) months from the date thereof. But in the case of the meeting convened in accordance with (10)(a)(i), the procedure of postponement for the Annual General Meeting stated in 9(b) shall apply.

B Rule 9 (a) states:

9. General Meetings

(a) Supreme Authority of the Chamber shall be vested in a General Meeting of Members. The Annual General Meeting of the Chamber shall be held after December 31st and not C later than April each year to transact the following business:

(i) To receive and if approved, to adopt the Annual Report and audited statement of accounts for the previous year;

D (ii) To elect an Executive Committee and to appoint auditors, if applicable;

(iii) To deal with such other matter as may be put before it.

[11] The EGM in question had determined the date of the AGM, E that is 23 March 2003. If the EGM was not lawfully convened then the illegality would also taint the AGM. In my view managing the affairs of the chamber is not synonymous with the controlling of the chamber as the President was not vested with the residual powers in everything. The Rules had allocated certain functions. F Nevertheless in its allocation it did not really vest overriding powers in certain individuals without regard to certain specific purposes. Rule 12 specifies "duties" and not power. Rule 12 states:

12. Duties Of Office Bearers

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(a) The President shall manage all affairs of the Chamber and he shall also represent the Chamber in all external matters. He is authorized to expend a sum not exceeding $200.00 at any one time. He shall preside at all General Meetings and Executive Committee Meetings and shall be responsible for H the proper conduct of such meetings.

(b) The Deputy President shall assist the President in all affairs and in the absence of the President, shall act in his place.

(c) The Vice Presidents shall assist the President, Deputy I President in all affairs and in the absence of the President or Deputy President, one of the Vice Presidents shall act in his place.

(d) The Secretary shall be responsible for the implementation of the decision of the General Meeting, and Executive Committee Meeting. He shall conduct all correspondence and supervise all employees of the Chamber. He shall attend all meetings and record the proceedings. He shall maintain a membership register containing particulars of name, date of admission, age (date of birth), identity card number, address and occupation of individual members and representative of firm or corporate members, in case of firm or corporate members also include the name and address of the firms.

(e) The Assistant Secretary shall assist the Secretary in all affairs and in the absence of the Secretary, shall act in his place.

...

(j) The Arbitration Officer shall mediate and arbitrate any dispute among members with their consent to reach an amicable settlement.

Rules 11(3), (5) and (7) were also noted and are as follows:

11. Executive Committee

(1) ...

(3) The function of the Executive committee is to organize and supervise the day-to-day activities of Chamber. It shall furnish a report to each Annual General Meeting on its activities during the previous year.

(5) Where any urgent matter requiring the approval of the Executive Committee arises and it is not possible to convene a meeting, the Secretary may obtain much approval by means of a circular letter. The following conditions must be fulfilled before a decision of the Executive Committee is deemed to have been obtained:

(a) The issue must be clearly set out in the circular and forwarded to all members of the Executive Committee.

(b) At least one half of the members of the Executive Committee must indicate whether they are in favour or against the proposal.

(c) The decision must be by a majority vote.

Any decision obtained by circular letter shall be reported by the Secretary to the next Executive Committee meeting and recorded in the minutes thereof.

(7) Between General Meetings, the Executive Committee shall interpret the rules of the Chamber and when necessary determine any matter on which the rules are silent. Except where they are contrary to or inconsistent wit the policy previously laid down by the General Meeting the decision of the Executive Committee shall be binding on all members of the Chamber unless and until countermanded by a resolution of a General Meeting.

[12] Enclosure 3 was opposed on several grounds but the principal ones were:

(a) the subject matter of the action was more of a dispute among members or office bearers of a society and as such the proper forum was the Registrar of Societies and not the High Court based on s. 16 of the Societies Act 1966;

(b) The plaintiffs' application was without merits and in addition had been rendered academic. It was alleged that the essence of the plaintiffs' claim was to obtain an injunction and since an AGM had already been convened and office bearers had been elected on 23 March 2003 the whole exercise before the court was academic in nature. It was contended that an injunction that had been previously sought to prevent the AGM from being convened had been dismissed.

[13] The EGM of 18 February 2003 was disputed on the basis that it was convened at the behest of the President in such a manner that it was in breach of r. 10(a)(i) and (ii) of the Rules of JCCCP. It was also questioned on the ground that the members who requisitioned for the meeting to be convened were less than twenty as required under the Rules. In addition the membership of some of the persons who purported to have made the requisition was disputed on the ground that it was breach of r. 7(b) of the Rules of the JCCCP. It was further contended that non-members had participated in the EGM 18 February 2003. Rule 7(b) states:

7. Election Of Executive Committee And Voting Rights

(a) ...

(b) At any General Meeting of Members, new members whose election to membership is at the time less than three (3) months and other members whose arrears of subscription exceed six (6) months shall not have the priviledge to vote or be voted in for any office. Every member shall be entitled

to only one vote. Each firm or corporate member shall send only one representative to take part in the activities of the chamber.

[14] Counsel for the plaintiffs had averred that pursuant of r. 11(3), no proper instructions had been issued to the first plaintiff (in the absence of the Secretary) to convene an EGM. Rule 12(c) provided that in the absence of the Secretary, the first plaintiff as Assistant Secretary was enabled to discharge the functions of a Secretary.

[15] The first argument was the issue of the application of the Societies Act 1966. Counsel for the respondent in his written submission had referred to s. 16 which is as follows:

Disputes

16. (1) If the Registrar is of the opinion that a dispute has occurred among the members or office-bearers of a registered society as a result of which the Registrar is not satisfied of the identity of the persons who have been properly constituted as office-bearers of the society, the Registrar may serve notice on the society requiring the society, within one month of the service of such notice, to produce to him evidence of the settlement of any such dispute and of the proper appointment of the lawful office-bearers of the society or of the institution of proceedings for the settlement of such dispute.

(2) If any such notice as is provided in subsection (1) is not complied with to the satisfaction of the Registrar within the period of one month or any extension thereof allowed by the Registrar, the Registrar may take steps to cancel the registration of the society under section 13.

[16] Before the registrar could form an opinion that a dispute has occurred in order to act under s. 16(1) the dispute itself must have been referred to it. Reference had been made to r. 12(j) of the JCCCP Rules. Rule 12(j) states:

the arbitration officer shall mediate and arbitrate any dispute among members **with their consent**. (emphasis added)

[17] In the present proceedings the position disclosed was that the defendant as President had declined to convene an EXCO meeting. Instead an EGM had been convened independently of the EXCO which resolved that an AGM be held. The consequence of the EGM was that the Secretary and the first plaintiff as Assistant Secretary to the JCCCP were removed. That

same EGM also resolved that the decision of the 12th EXCO meeting was to be rejected and that an AGM was to be convened which was subsequently convened on 23 March 2003 and further authorized the defendant as President of the JCCCP to be Secretary and Assistant Secretary.

[18] Upon reading r. 12(j) it is not a provision that could compel members of the chamber to resort to arbitrate for it depends on how that provision could be invoked. Rule 12(j) would only compel an arbitration officer to act if the members consent but did not indicate how the mediation processes were to be initiated. It was found that the rules themselves were lacking in providing a proper link between s. 16 of the Societies Act 1966 and the JCCCP. In effect the rules of the JCCCP did not of itself really provide that members were only to resort to arbitration for if any one party refused consent, other members would then be left without a remedy. In the present situation it would be doubtful that a dispute could be referred to the registrar. Section 16 of the Societies Act 1966 did not constitute an exclusive statutory remedy in the circumstances of the present proceedings.

[19] In any case Raja Azlan Shah CJ (Malaya, as he then was) stated in *Pengarah Tanah & Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 148 said:

> In the first place it must be made clear that the existence of a statutory remedy is no bar to an action for a declaration. This case falls within the general principle that the jurisdiction of the High Court is not to be taken away without express words; and this applies to an action for a declaration:

[20] His Lordship had in that case also applied *Pyx Granite Estates Ltd v. Ministry of Housing and Local Government* [1960] AC 260. In the latter case Viscount Simonds stated (at p. 286)

> It is a principle not by any means to be whittled down that the subjects recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words.

[21] It had been urged by counsel for the defendant that since an annual general meeting had been convened the issue had been rendered academic. However it could not be alleged that the court was being asked to pronounce on an abstract question or that there was no dispute to be resolved. The AGM had passed certain resolutions affecting members. The AGM was convened pursuant to the EGM.

[22] The issue raised pertained to the status of the members of the JCCCP counsel for the plaintiffs referred to *Tan Kah Wich & Ors v. Datuk Phua Cheng & Ors (supra)*. In that case judicial intervention had been exercised in respect of an infringement of a private right of membership in a society. In the present proceedings there was nothing to indicate that a member had an opportunity to resort to arbitration. The rules of the JCCCP did not indicate how recourse could be made to arbitration in the event of a dispute.

[23] Essentially what was disputed was the power of the President. In perusing the rules and the evidence it was found that the President had displayed a unilateral exercise of powers. It was no doubt contended that the r. 12(a) conferred on the defendant certain powers. The word "manage" in its ordinary diction also means planning, making, arrangement, define and distribute. The complaint of the plaintiffs focused primarily on the issue of the President exercising powers where it would appear he had derogated to himself certain powers in a manner which was not found in the JCCCP Rules.

[24] The validity of the EGM hinged on there being non-compliance with r. 10(a)(i) and (ii) and the functions of the EXCO. Yet the President had wrested away the powers. His actions also brought into question instances of non-compliance with the provisions of r. 7(b) where the participation of certain members were questionable on the ground of irregularities in respect of their membership in the JCCCP.

[25] The President had displayed unilateral exercise of powers in infringement of r. 7(b) and that resulted in unauthorized members casting votes. The infringement of the rules verged on the EGM being wrongfully convened independently of the EXCO which was vested with the power of running the activities of the JCCCP. Pertinent to note is the provision of r. 11(7) of the JCCCP Rules.

[26] Since the EGM was convened on the basis of non-compliance with the rules, it was found that the resolutions undertaken during the EGM of 18 February 2003 were therefore null and void and of no effect. The purported removal of the first plaintiff was also rendered to be of no effect since the EGM should not have been convened in the first place. The justice of the case also indicated that certain members were not given the opportunity to be heard.

[27] The defendant in my view had failed to rebut the allegations particularly any rationalized explanation for the application of the JCCCP Rules in the manner that the President had manipulated it. It was evidence of an authoritarian approach and sheer disregard for the JCCCP Rules. The plaintiffs had cited another judicial view. Although it was a case from the Republic of Singapore, nevertheless with an almost identical common law background its persuasive effect was of great value. The view was pronounced in *Hilborne v. Singapore Island Country Club* [1996] 2 SLR 468. The relevant passage (at p. 483) is the following:

> Club rules, like contract, do not operate in a vacuum. As Lord Wilberforce said in *Reardon-Smith Line Ltd v. Yngvar Hansen-Tangen* [1976] 1 WLR 989: 'No contracts are made in a vacuum; there is always a setting in which they have to be placed.' What Lord Wilberforce said about commercial contracts in that case can with ease be applied to the rules of a club, which by common assent constitute a contract among the members.

[28] Similarly the functioning of JCCCP according to its Rules was like a club or a society which was to be operated for the benefit of all members. And further in the present proceeding the efficacy of the JCCCP Rules were to applied and enforced by all members alike in a fair and reasonable manner. It is axiomatic that all members of a society irrespective of their position are required to adhere to the rules unless express powers are conferred. Rule 11(7) however indicated that it was also not the President who held the ultimate authority in the interpretation of the Rules since that rule stipulated:

> Between General Meetings, the Executive Committee shall interpret the rules of the Chamber and when necessary determine any matter on which the rules are silent. Except where they are contrary to or inconsistent with the policy previously laid down by the General Meeting the decision of the Executive Committee shall be binding on all members of the Chamber unless and until countermanded by a resolution of a General Meeting.

[29] On a balance of probabilities it was found that the plaintiffs had established a case of a President who had purported to act not in accordance with rules which were equally binding on him but had actually acted in excess of the powers.

[30] The EGM that had been convened at the instance of the defendant, on the basis that it contravened the rules, was therefore illegal and in consequence, null and void and consequently too the AGM with all the resolutions that were carried at that time. Order in terms were therefore granted in respect of prayers (1), (2), (3) and (4) of encl. 3. No further order was made in respect of prayers (5), (6), (7) and (8). However a further declaratory order was made that the JCCCP convene a fresh annual general meeting within a reasonable time in a manner consistent with the terms and provisions of the JCCCP Rules.

Cost was to be taxed and to be paid from the funds of the JCCCP.